

September 15, 2006

**Invitation For Bid
Letter of Invitation
Joseph P. Bort MetroCenter
Roof Replacement**

**R A F C
R E G I O N A L
A D M I N I S T R A T I V E
F A C I L I T Y
C O R P O R A T I O N**

**JOSEPH P. BORT
METROCENTER
101 EIGHTH STREET
OAKLAND, CA
94607 - 4700
510/817-5700
TDD/TTY 510/817-5769
FAX 510/817-5848**

Dear Contractor:

The Regional Administrative Facility Corporation (RAFC) invites your firm to respond to this Invitation for Bid (IFB) for:

Joseph P. Bort MetroCenter Roof Replacement

The Joseph P. Bort MetroCenter office building has a need for a contractor to perform Roof Replacement.

RAFC is a non-profit mutual benefit corporation formed in 1983 to provide project management to the Joseph P. Bort MetroCenter, a condominium office building located at 8th and Oak Streets in Oakland, CA. The MetroCenter is occupied by its three owner-members: Metropolitan Transportation Commission (MTC), a regional transportation planning agency established pursuant to California Government Code § 66500 *et seq.*; the Association of Bay Area Governments (ABAG); and the San Francisco Bay Area Rapid Transit District (BART).

This letter, together with the Instructions to Bidders and Bidding Requirements, General Conditions, Special Conditions, Specifications, Bid and Reference Forms, and all other appendices attached hereto, comprise the Invitation for Bid (IFB) for this project. Responses to the IFB are to be submitted in accordance with the instructions stated herein.

Bid Submission

Interested bidders must submit their bids in sealed envelopes by **4:00 p.m. on October 6, 2006**. **Bids received after that date and time will not be considered.** All bids must be completed and submitted on the enclosed *Bid Form, Appendix B*, in order to be considered. *Appendix C, Reference Form*, must be submitted with the bid. Bidders who do not complete all appendices risk being found non-responsive.

RAFC Point of Contact

Bids and all inquiries relating to this IFB should be submitted to the Project Manager at the address shown below. For telephone inquiries, call (510) 817-5723. E-mail inquiries may be directed to [<rhoffman@mtc.ca.gov>](mailto:rhoffman@mtc.ca.gov).

Metropolitan
Transportation
Commission
Steve Heminger
President

Association of
Bay Area Governments
Henry Gardner
Vice-President

San Francisco
Bay Area Rapid Transit
District
Thomas E. Margro
Secretary-Treasurer

San Francisco
Bay Area Rapid Transit
District
Laura Giraud
Assistant
Secretary-Treasurer

Robert Hoffman, Project Manager
Regional Administrative Facility Corporation
101 Eight Street, Third Floor
Oakland, CA 94607-4700

Minimum Qualifications

To be eligible to submit a bid, a bidder must:

1. Have been regularly engaged in the business of providing commercial flat roof replacement for at least five years within the last ten years;
2. Have a sufficient number of qualified employees to guarantee prompt, efficient work;
3. Possess current and active license/certificate(s) for conducting business in the city of Oakland, and for performing the type of work requested;
4. Have performed successfully, within the last five years, at least ten projects of equivalent nature; and
5. Provide a five-year workmanship warranty, and a fifteen-year manufacturers warranty for materials and labor effective from completion of work and RAFC acceptance thereof.

Other Qualifications:

In addition to the qualifications and experience of the contractor, RAFC expects the Contractor to be able to:

1. Perform any mutually agreed upon contractual duties as outlined in the purchase order with RAFC;
2. Clearly communicate problems, observations and suggestions to the RAFC Project Manager on a regular basis as appropriate;
3. Follow agreed-upon written procedures and the verbal instructions of building personnel, and
4. Comply with all OSHA department requirements, as well as those required by the City of Oakland, Alameda County and/or any other environmental regulatory agency.

Bidders may be required to verify these qualifications prior to the award of contract.

Specifications and Schedule

The specifications upon which bids are to be based are described in *Appendix A* to this IFB. Section III of this IFB, Special Conditions, also contains substantive requirements that must be fully complied with in order to guarantee your responsiveness to this IFB.

We expect the vendor selected as a result of this IFB to begin work on or as soon after September 28, 2006 as possible, and to complete the work within sixty (60) days of commencement of work. Work will be ordered by means of an individual purchase order based on the price quote submitted on the enclosed bid form (*Appendix B*).

Supplier Selection

Bids will be initially evaluated for responsiveness and adherence to minimum qualifications. Quality and reliability of service are of the highest importance. In order to ensure superior service, references will be checked, and bidders may be required to provide additional information verifying their experience.

A contract, if awarded, will be to the responsible bidder submitting the lowest responsive bid, as indicated in the "Total" space on the *Appendix B, Bid Form*. The "Total" space represents the lowest overall price for roof sections A, B, and C as detailed on the *Appendix A-1, Diagram*. RAFC reserves the right to award a contract for less than all three sections if the "Total" price bid by the low bidder exceeds RAFC's budget.

Sections D and E (refer to *Appendix A-1, Diagram*) of the MetroCenter Roof do not require roof replacement at this time, but RAFC is requesting quotations for these two sections as optional items on *Appendix B, Bid Form*. These prices will not be considered when determining the low bid.

Labor and Materials Bond

The successful bidder will be required to furnish a Labor and Materials Bond, issued by a Surety acceptable to RAFC. The Labor and Materials Bond will be 100% of the total bid amount, as described in Section III.L on page 9 of the IFB.

Bidder Selection Timetable

9 a.m., on September 27, 2006	Mandatory Bidders Conference, Fishbowl Conference Room, 3rd floor.
No later than 7 days prior to the date bids are due.	Deadline for requests for clarification or exception
October 6, 2006	Closing date & time for receipt of bids & bid opening.
October 9, 2006 (approximate)	Issuance of Purchase Order

Bidders Conference

A Mandatory Bidders conference will be held on Monday, September 27, 2006 at 9 a.m. in the Fishbowl Conference Room. The bidders conference will be followed by a walkthrough of the

project site. If a prospective bidder will be unable to attend the Mandatory Bidders Conference as scheduled, that bidder must contact the Project Manager on or before September 20, 2006, to request an alternate date.

General Conditions

RAFC reserves the right to award a contract or reject all bids.

A signed RAFC purchase order mailed or delivered to a bidder shall constitute a binding contract, which incorporates this IFB and its addenda, if any, and all documents referenced herein, any deviations from the specifications expressly accepted by RAFC, and all terms and conditions of the Purchase Order (PO). A sample PO, together with additional conditions applicable to this IFB, are attached as *Appendix D*.

Your attention is directed to the Special Conditions on insurance requirements on page 8 of the IFB, Section J. Any objections to the insurance requirements must be brought to the attention of the Project Manager on or before the date established above for receipt of requests for clarifications/exceptions, otherwise, compliance with the insurance requirements will be assumed.

Authority to Commit RAFC

The President of the RAFC Board of Directors will commit RAFC to the expenditure of funds in connection with this IFB.

RAFC appreciates your participation in this bidding process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Heminger', with a large, sweeping flourish extending to the right.

Steve Heminger
President, RAFC Board of Directors

SH: DR

J:\CONTRACT\Procurements\Engineer&Architect\Roof Replacement IFB 06.doc

INVITATION FOR BID

by

REGIONAL ADMINISTRATIVE FACILITY CORPORATION

for

Roof Replacement

September 15, 2006

Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

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I. INSTRUCTIONS TO BIDDERS AND BIDDING REQUIREMENTS

A. Directions

This package contains the specifications regarding the work to be done and the schedule. (See Appendix A, **Specifications**) **All bids must be completed and submitted on the enclosed Bid Form, Appendix B, in order to be considered. Appendix C, Reference Form, must also be submitted with the bid.** Bidders who do not complete all appendices, risk being found non-responsive.

The provisions set forth below specify the standards by which bids will be received and considered by RAFC. Bids not complying with these provisions may be considered non-responsive by RAFC.

Your bid package shall include the following:

1. A signed Bid Form (*Appendix B*) from the signator.
2. A completed Reference Form (*Appendix C*).
3. A copy of your standard warranty which, at a minimum, must provide a five year workmanship warranty, and a fifteen year manufacturers warranty for materials and labor effective from completion of work and RAFC acceptance thereof.

B. Definitions

1. **RAFC**: Regional Administrative Facility Corporation.
2. **Bidder**: An individual, firm, partnership, corporation, or combination thereof, submitting a bid.
3. **Contractor/Supplier**: The Bidder to whom a purchase order or contract is mailed or otherwise offered.
4. **Bid**: The forms included in this IFB become a bid when completed properly by a Bidder and submitted to RAFC and MTC.
5. **Contract**: A signed RAFC purchase order (Appendix D) mailed or delivered to a particular bidder, shall constitute a binding contract, which incorporates this IFB, and its addenda, if any, all documents referenced herein, any deviations from the specifications expressed and accepted by RAFC, and all terms and conditions of the Purchase Order.

C. Preparation of Bid

1. General

All prices and quotations shall be written legibly by computer printer, typewriter or pen and ink. No erasures shall be made. Errors may be crossed out and corrected by typewriter or pen and ink

adjacent to the item crossed out. Each correction shall be initialed in ink by the person signing the bid.

2. Bid Price

The bid price shall include all costs of labor, materials, equipment, tools, machinery, utilities, transportation, license or permit fees, overhead, and profit and all other services necessary for proper execution and completion of the work.

3. Taxes

The total bid price shall include full compensation for all applicable federal, state, and local taxes, as may be appropriate.

4. Irregular Bids

Bids may be rejected if they show such irregularities as: any alteration of form, additions not called for, conditional bids, incomplete bids, indefinite or ambiguous bids, obviously unrealistic or unbalanced prices, or a signature by other than an authorized person.

5. Conditional Bids

No condition included in a bid shall be binding upon RAFC if in conflict with, inconsistent with, or in addition to the terms and conditions of this IFB, unless expressly accepted in writing by RAFC.

6. Addenda and Interpretations

RAFC will not be responsible for any oral interpretation of the meaning of the requirements or specifications in this IFB. Every request for such interpretation shall be in writing addressed to: Attention: Project Manager (see Letter of Invitation) RAFC, 101 - 8th Street, Oakland, CA 94607-4700. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be mailed and/or faxed with a request for confirmation, to all bidders who have requested addenda. All addenda so issued shall become part of the Contract Documents.

7. Brand Names

Any references to Brand Names or the names of manufacturers and their catalog numbers is only descriptive of the variety and quality of items desired, and is not intended to be restrictive unless specifically indicated otherwise. Bids on items equal to those indicated herein for descriptive purposes will be considered, unless otherwise indicated, provided that a clear and detailed description of the manufacturer and model number of the substitution is given and the manufacturer's specifications are attached to the bid. RAFC and MTC reserve the right to determine at their sole discretion whether an item proposed is of equal value, utility or merit to the standards established by the Brand Name indicated.

8. Deviations

RAFC reserves the right to permit deviations from the specifications if an article offered is deemed by RAFC to be of as good quality and as satisfactory for its intended use as an article fully meeting specifications. Unless exceptions are noted by Bidder, the article offered will be assumed to be in accordance with specifications indicated.

9. Examination of Plans, Specifications and Sites

The Bidder shall satisfy him/herself as to the character, quality, and quantities of work to be performed, materials to be furnished, and as to the requirements of the proposed contract. The submission of a bid shall be *prima facie* evidence that the Bidder has made such examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements of the proposed contract, plans and specifications.

10. Submission

Only bids submitted on the furnished bid form will be considered. Bids received after the date and time indicated for receipt of bids will not be considered. Bidders will be solely responsible for the delivery of the bid to RAFC by the time, on the date, and at the location indicated for receipt of bids.

11. Withdrawal Before Bid Opening

No bid may be modified; however, a bid may be withdrawn by written request, signed by the individual who signed the bid or his authorized representative, and received by RAFC prior to the time indicated for receipt of bid.

12. Protest of Specifications

Prospective bidders may submit written protests of IFB specifications on the grounds that that specifications are biased, unduly restrictive, discourage competition, or do not comply with state or local law or regulation no later than seven (7) calendar days prior to the date bids are due. Such protests will be reviewed by RAFC and responded to prior to bid opening. If appropriate, the time of bid opening will be extended to accommodate any changes in the IFB.

13. Relief of Bidder after Bid Opening

Unless RAFC in its sole discretion elects otherwise, a Bidder shall not be relieved of his bid nor shall any change be made in his bid because of mistake. If a Bidder requests relief and RAFC agrees to consider such request, it will be such Bidder's responsibility to establish that:

- (a) A mistake was made;
- (b) The Bidder gave RAFC written notice of the mistake within five (5) days after the opening of bids, specifying in detail how the mistake occurred;
- (c) The mistake made the bid materially different than the Bidder intended it to be;
- (d) The mistake was made in filling out the bid and was not due to error in judgment or to carelessness in reading the IFB or referenced documents.

D. Award of Contract

1. Bid Opening

Bids will be opened at RAFC's offices, at the address, on the date, and at the hour indicated herein for the receipt of bids. Bidders are invited (not required) to be present.

2. Duration of Offer

A signed bid is deemed to be an offer to enter into a contract for services bid and is firm for the period of time stated in the Letter of Invitation, unless extended by the bidder.

3. Discretion of RAFC

RAFC reserves the right to reject any and all bids and to waive informalities and minor irregularities in bids received, other provisions herein notwithstanding.

4. Selection of Supplier

The award, if an award is made, will be to the responsible Bidder, whose bid, conforming in all material respects to the terms and conditions of this IFB, is the lowest in price for the total for Sections A, B and C as indicated in *Appendix B*.

5. One Bid

If RAFC receives only one bid and that bid is made on terms differing from those set forth herein, RAFC may, at its discretion, accept such terms as responsive.

6. Selection Disputes

A bidder may protest the selection of a Supplier on the grounds that RAFC procedures, or applicable provisions of state or local law, have been violated or inaccurately and/or inappropriately applied by RAFC by submitting to the Project Manager a written explanation of the basis for protest within three working days after bid opening. The protest will be reviewed by RAFC staff and a response will be provided to the protesting bidder prior to issuance of a purchase order. The staff response may be appealed to RAFC's Board of Directors no later than three (3) working days after receipt of the agency's written response. The RAFC Board of Director's decision will be the final agency decision.

II. GENERAL CONDITIONS

A. Independent Supplier

Supplier is an independent contractor and not an employee or agent of RAFC and has no authority to contract or enter into any other agreement in the name of RAFC. Supplier has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by Supplier who are assisting in the performance of services under this Agreement. Supplier shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. Supplier shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

B. Changes to Purchase Order

Any material changes to the terms of the Purchase Order (PO) shall require a written amendment to the purchase order, signed by the RAFC President or a designated representative and Supplier. No claim for additional compensation shall be recognized unless contained in a duly executed amendment.

C. Termination

1. Termination for Convenience

RAFC may, by written notice stating the extent and effective date, terminate their commitments to Contractor for convenience in whole or in part, at any time. RAFC shall pay the Contractor as full compensation for performance until such termination: (a) the pro rata price for the delivered and accepted portion of the work; and (b) with respect to the undelivered or unaccepted portion of the contract, a reasonable reimbursement for those costs incurred prior to termination, not otherwise recoverable from other sources by Supplier, provided compensation hereunder shall in no event exceed the total price. In no event shall RAFC be liable for any loss of profits on the portion of the contract so terminated.

2. Termination for Default

If Contractor becomes insolvent, assigns or subcontracts the work without RAFC approval, does not deliver the work specified in the Contract or fails to perform in the manner called for, or fails to comply with any other material provision of the Contract, RAFC may terminate the Contract for default. Termination shall be effected by serving a ten (10) day advance written notice of termination on Contractor, setting forth the manner in which Contractor is in default. If Contractor does not cure the breach or propose a plan and schedule for curing the breach acceptable to RAFC within the ten (10) day period, the Contract shall be deemed terminated.

RAFC shall pay the Contractor as full compensation for performance until such termination the amount which would be payable under Section II. C.1, above, , offset by any costs incurred by RAFC to correct and complete work required under the Contract, including the difference between Contractor's price for the contract and any higher price paid to another Contractor retained to complete the work.

If it is determined by RAFC that Contractor's failure to perform resulted from unforeseeable causes beyond the control of Contractor, such as a strike, fire, flood, earthquake or other event that is not the fault of, or is beyond the control of Contractor, RAFC, after setting up a new delivery or performance schedule, may allow Contractor to continue work, or treat the termination as a termination for convenience.

D. Indemnity

Contractor agrees to indemnify, and hold RAFC, BART, MTC, ABAG, their commissioners, directors, officers, employees and agents harmless from all claims, demands, suits, losses, damages, injury, and liability, direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act, or failure to act of Contractor, its officers, agents, employees and subcontractors or any of them, under or in connection with this IFB; Contractor agrees at its own cost expense and risk to defend any and all claims, demands, suits, or other legal proceedings brought or instituted against RAFC, BART, MTC, ABAG, their commissioners, officers, agents, and employees, or any of them arising out of such acts or failure to act, and to pay and satisfy any resulting judgments.

E. Assignment

The Contractor shall not assign any right, duty or responsibility in this contract without the prior written consent of RAFC; provided however, that claims for money due or become due to the

Contract from RAFC under this contract may be assigned without such approval. Notice of any such assignment shall be furnished promptly to RAFC, and any such assignment shall be subject to all authorized withholdings in favor of RAFC.

F. Choice of Law

All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of the State of California.

G. Prohibited Intent

No member, officer or employee of RAFC, MTC, ABAG, or BART, during his/her tenure shall have any interest, direct or indirect, in the Contract or the proceeds thereof.

H. Construction Contract Provisions

General Conditions for construction contracts are included in this IFB as Appendix E.

III. SPECIAL CONDITIONS

A. Bidder's Qualifications

To be eligible to submit a bid, a bidder must:

1. Have been regularly engaged in the business of providing commercial flat roof replacement for at least five years within the last ten years;
2. Have a sufficient number of qualified employees to guarantee prompt, efficient work;
3. Possess current and active license/certificate(s) for conducting business in the city of Oakland, and for performing the type of work requested;
4. Have performed successfully, within the last five years, at least ten projects of equivalent nature; and
5. Provide a five year workmanship warranty, and a fifteen year manufacturers warranty for materials and labor effective from completion of work and RAFC acceptance thereof.

B. Other Qualifications

In addition to the qualifications and experience of the contractor, RAFC expects the Contractor to be able to:

1. Perform any mutually agreed upon contractual duties as outlined in the contact/purchase order with RAFC;
2. Clearly communicate problems, observations and suggestions to the RAFC Project Manager on a regular basis as appropriate;
3. Follow agreed-upon written procedures and the verbal instructions of building personnel, and

4. Comply with all OSHA department requirements, as well as those required by the City of Oakland, Alameda County and/or any other environmental regulatory agency.

The bidder may be required to verify these qualifications prior to the award of the contract.

C. *Period of Performance*

Bidder agrees to begin work on or as soon after September 25, 2006 as possible, and to complete the work within ninety (90) days of commencement of work.

D. *Subcontractors*

Bidders may not subcontract all or any portion of the work to be performed under the contract.

E. *Acceptance by RAFC*

The RAFC Building Manager will also be responsible for approving the work upon completion. Acceptance of delivery or approval of installation does not affect or negate the guaranty provided under Section E below.

F. *Guaranty*

The Contractor guarantees that the services will be performed in a professional manner by qualified uniformed personnel. Upon receiving notification from RAFC that a defect is detected, the Contractor shall repair or replace the work performed initially, without cost to RAFC, and to RAFC's satisfaction. The Contractor's guaranty excludes damage or defect caused by abuse by RAFC or modifications not executed by the Contractor. The Contractor guarantees to arrive promptly at the date and time scheduled with the Project Manager prepared to perform the tasks as specified in *Appendix A, Specifications*.

G. *Notices*

All notices or other communications to either party by the other shall be deemed given when made in writing and delivered or mailed to such party at their respective addresses as follows:

To RAFC: Attention: Robert Hoffman, Building Manager
RAFC
101 - 8th Street
Oakland, CA 94607-4700

To Supplier: Telephone number on Bid Form
Signator of Bid form
Address on Bid Form

H. *Scheduling*

Contractor must be able to perform the work specified in *Appendix A, Specifications*, as scheduled by the RAFC Building Manager.

I. *Examination of Specifications and Sites*

Bidders shall satisfy themselves as to the character, quality, and quantities of work to be performed, materials to be furnished, and as to the requirements of the proposed contract. The submission of a bid shall be prima facie evidence that a Bidder has made such examination and is

satisfied as to the conditions to be encountered in performing the work and as to the requirements of the proposed contract, plans and specifications.

J. Supplies

Contractor is to provide all necessary supplies and to include the costs of such supplies in its bid. A list of all supplies to be used by the Contractor is to be provided to and approved by the RAFC Building Manager prior to use. The Material Safety Data Sheets (MSDS) or equivalent information on each product used is to be attached to the list.

K. Insurance

The Contractor will be required, at its own expense, to obtain and maintain in effect at all times during the life of its Agreement with RAFC the following types of insurance:

1. Workers' Compensation Insurance as required by the laws of the State of California, and Employer's Liability of at least \$1,000,000.
2. Commercial General Liability insurance, (including personal injury, premises and operations, products and/or completed operations, contractual liability, property damage coverage and cross liability) and with a combined single limit of not less than \$1,000,000 for injury to any one person and for any one occurrence of personal and bodily injury, \$1,000,000 for property damage, and \$2,000,000 general aggregate.
3. Owned, Non-Owned and Hired Automobile Liability Insurance in the amount of \$1,000,000 per occurrence.

All such policies shall contain an endorsement providing that written notice shall be given to RAFC at least sixty (60) days prior to termination, cancellation or reduction of coverage in the policy or policies, and all policies shall be carried by an insurance company or companies approved by RAFC. In addition, each policy or policies of insurance described in Section III. K.2, above shall contain the following provisions:

1. Inclusion of MTC, RAFC, BART and ABAG, their commissioners, directors, officers, agents, and employees, as additional insureds with respect to work or operations in connection with this Agreement.
2. Endorsement providing that such insurance is primary insurance and no insurance of MTC, RAFC, BART or ABAG will be called on to contribute to a loss.

Promptly upon issuance of a purchase order and prior to receiving compensation for any work performed, Contractor shall deliver to RAFC, Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all such provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof. Contractor agrees, upon written request by RAFC, to furnish copies of such policies or endorsements, certified by an authorized representative of the insurer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor and approval of policy(ies) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant hereto,

including, but not limited to, liability assumed pursuant to the indemnification in Section II.D, Indemnity, above.

L. Bonding

The Contractor shall furnish a Labor and Material Payment Bond. The Labor and Material Bond will be in an amount equal to 100% of the total bid amount. The bond shall be made in favor of RAFC, on a form provided by RAFC executed by a surety company acceptable to RAFC ("A" rating or better) and authorized to execute such in the State of California; and shall be furnished within 10 days of receipt of Notice to Award from RAFC. The Payment Bond shall secure the payment of the claims of laborers, mechanics or material men employed on the work under Contract and shall be in full force and effect until all work is accepted by RAFC and all claims for materials and labor have been paid. Changes in the Specifications (*Appendix A*) or extensions of time shall in no way release Contractor from its obligations hereunder.

M. Prevailing Wage Rates, Apprenticeship and Payroll Records

The Contractor shall comply with California Labor Code Sections 1720 *et seq.* and Title 8 of the California Code of Regulations Sections 16000 *et seq.* governing the payment of prevailing wages, as determined by the Director of the California Department of Industrial Relations. In particular, the Contractor's attention is drawn to Labor Code Sections 1770 (payment of prevailing wage rate), 1775 (penalty for non-payment), 1776 (payroll records), and 1777.5 (use of apprentices). The selected Contractor will be provided with the labor certification set forth in Labor Code Section 1861 upon notification of award and must return a signed certification prior to performing work.

N. Injury Prevention

As part of RAFC's Injury Prevention Program (IPP) established pursuant to California Labor Code Section 6401.7, Contractor may be required to provide RAFC with a description of Contractor's IPP and, specifically, of methods and procedures for identifying and using safe conditions and work practices at the worksite while performing specified work.

APPENDIX A, SPECIFICATIONS

I. Contractor Requirements

Regional Administrative Facility Corporation (RAFC) has determined that Sections A, B and C (refer to Appendix A-1, Diagram) of the MetroCenter Roof require roof replacement as these sections are currently leaking and seeping water into the internal portion of the building. One of the problems with the current roofing system is that it has poor drainage that results in ponding of water in areas, and these three areas have incurred the most damage. The selected Contractor will replace the roof in those three (3) portions of the MetroCenter roof as follows:

1. Tear up and remove existing built-up roof sections identified, base flashings, cant strips, etc., down to existing plywood substrate and haul/remove all debris from site. Any/all damaged plywood decking will be removed and replaced per unit costs noted on Appendix B.
2. Prepare existing sections of roof for new roofing.
3. Install new metal flashing to sections indicated.
4. Prepare the existing roof system to receive the new .060 mil overlay single ply roof system. Remove pipe flashings, pitch pans, wall flashings, etc. and haul the debris from the site.
5. Use and install .060 mil overlay single ply roof system in accordance with the manufacturers written specifications.
6. New flashings shall be installed concurrently with the roof membrane as the job progresses. Flashings shall consist of pre-manufactured pipe and vent boots and field fabricated non-reinforced membrane. Flashings shall be installed in accordance with the manufacturer's written specifications.
7. The parapet walls and base flashings shall be wrapped with the single ply membrane over one layer of felt. Mechanically attach wall flashings greater than 18 inches in height at 24 inch intervals, fastening to be at 9 inches on center per the manufacture's specifications. Wall flashings are to be secured at the top of the parapet wall with a termination bar.
8. Remove existing through wall scupper assemblies and replace with new, custom clad metal scuppers.
9. Install lead-flashing sheets at all internal roof drains and install new counter-flashing metal at the existing curb-mounted air conditioning units if required.
10. Replace all plumbing pipe flashings with new sheet metal pipe flashings, and existing galvanized iron vent pipe flashings and T-tops with new to match existing. Install new

split-lead pipe flashings at all electrical, gas and condensate penetrations as needed. New pitch pockets will replace the existing.

11. Support all pipes running across the roof with redwood blocks placed over a section of ½” thick roof protection material. The pipes will be clamped to the wood blocks.
12. The roof and surrounding grounds will be left free of debris and in a broom-clean condition at the end of each workday.
13. Ensure that new roof is equipped with proper drainage.

MetroCenter Engineers have access to walk on the roof regularly without causing damage.

Sections D and E (refer to Appendix A-1, Diagram) of the MetroCenter Roof do not require roof replacement at this time, but RAFC is requesting quotations for these two sections as optional areas under this Invitation for Bid (IFB).

II. Contractor Requirements

- Contractor must hold a current Contractors License in the State of California, and must acquire and hold while performing work all applicable City and County required licenses.
- Written confirmation that Contractor is approved by the Manufacturer to install the proposed product.
- Contractor personnel must have at least five years experience in this type of work. All apprentices shall be under the direct supervision of an experienced supervisor.
- Work crew shall remain consistent for the duration of the project.
- The Project Manager must approve contractor's assigned supervisor. The approved supervisor shall not be removed from the project without cause or without prior notification to Project Manager. If removal is for cause, the Contractor shall submit justification in writing to the Project Manager within twenty-four (24) hours of the removal. All work will cease until a new supervisor is approved by Project Manager and is on site.

III. Safety

- Comply with all applicable safety codes and regulations that govern the work, including those of the City of Oakland, OSHA, Environmental Protection Agency (EPA), and the Air Quality Management District.
- Contractor shall provide safety protection to workers, pedestrians, vehicles, and other property while performing work for the duration of the project.
- All products stored and used on site shall be clearly labeled with proper warning to prevent accidental use of the products by unauthorized persons.

IV. *Work Hours and Building Access*

- Work that blocks the front lobby entrance on the 8th street side or the rear entrance on the 7th street side may not be performed during the hours of 7:00 am to 5:30 p.m. Monday through Friday.
- Allow owner access to the building during the work at locations designated by the owner. Provide access for random review of the work to assess quality, perform tests, and quantify repairs.

V. *Damage Prevention and Correction*

- Exercise caution in performing the work so as not to damage adjacent building elements.
- Protect windows and doors, joints, and other openings from infiltration of particulates, water, and/or chemicals into the building.
- If the MetroCenter is damaged by the execution of this work, replace the damaged areas at no additional cost to RAFC.

VI. *Submittals*

Contractor shall submit (at a minimum) the following information for all products utilized:

- Materials Safety Data (MSDS) Sheets.
- Manufacturer samples and color charts.
- Product Certificates signed by the manufacturers certifying that products furnished comply with project requirements and are suitable for the use indicated.
- Manufacturer's Installation Instructions: Indicate special procedures and conditions requiring special attention.

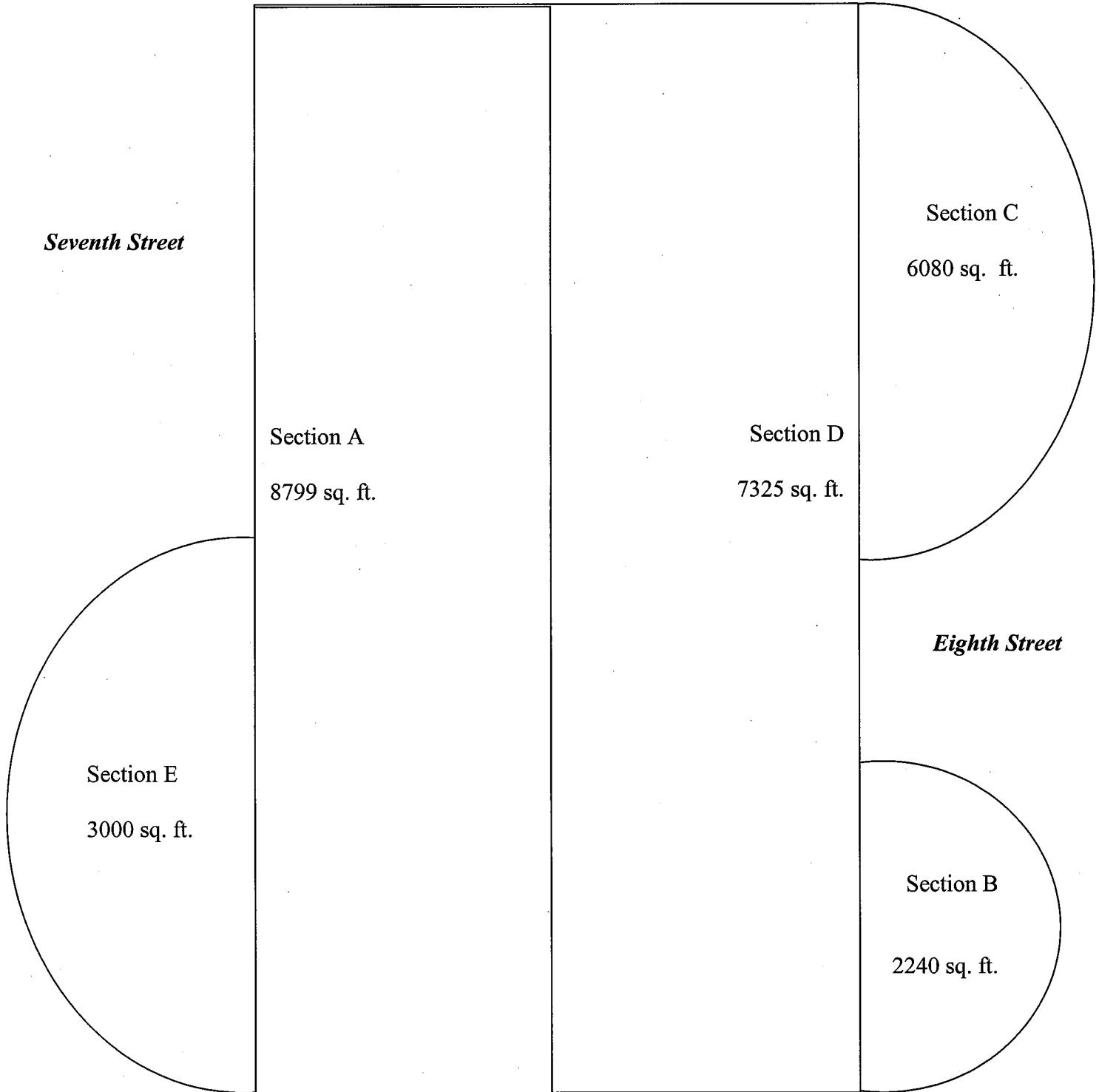
VII. *Warranty*

Special warranties specified in this Section shall not deprive RAFC of other rights RAFC may have under other provisions of the Contract Documents and shall be in addition to, and run concurrent with, other warranties made by Contractor under requirements of the Contract Documents.

Contractor shall provide at a minimum, a five year workmanship warranty, and a fifteen year manufacturers warranty for materials and laboreffective from completion of work and RAFC acceptance thereof.

**APPENDIX A-1,
DIAGRAM**

Madison Street



Oak Street

**APPENDIX B,
BID FORM**

I. PRICE QUOTATION

(Bid prices include labor, materials, and all applicable subcharges, such as taxes, insurance, overhead, and profit.)

Required Sections	Provide firm fixed lump-sum price for the Replacement of each of the MetroCenter Roof sections below in Accordance with <i>Appendix A.</i>	
A	Seventh Street side section of roof	\$
B	Eighth Street / Oak Street section of roof	\$
C	Eighth Street / Madison Street section of roof	\$
Total:		\$

Optional Sections	Provide firm fixed lump-sum price for the Replacement of each of the Optional sections of the MetroCenter Roof sections below in Accordance with <i>Appendix A.</i>	
Option D	Penthouse roof section	\$
Option E	Auditorium roof section	\$
Total:		\$

***Includes all costs (labor, materials, equipment, disposal fees and all applicable surcharges such as taxes, insurance, overhead and profit, indirect and direct fees)**

II. OTHER PRICE QUOTATIONS

(Will not be evaluated for purposes of determining low bid)

A. Please state your hourly bill rate for any services not included in Part I of this Appendix B, Bid form.

Hourly Bill Rate	\$
Overtime Rate	\$
Double Time Rate	\$

B. Price Per Square Foot for Removal and Replacement of Plywood Decking: \$ _____

III. MINIMUM QUALIFICATIONS:

Check either yes or no for each question.

Yes

No

Has your organization been regularly engaged in the business of providing joint sealant replacement, cleaning and sealing of office buildings similar to the MetroCenter for a minimum of five (5) years?		
Does your organization have a sufficient number of qualified employees to guarantee prompt, efficient work?		
Does our organization possess all current and active license/certificate(s) for conducting business in the city of Oakland?		
Has your organization successfully performed at least ten (10) projects of equivalent nature, within the last five (5) years?		
Will organization provide at a minimum, a five year workmanship warranty, and a fifteen year manufacturers warranty for materials and labor effective from completion of work and RAFC acceptance thereof?		

IV. SIGNATURE OF AUTHORIZING OFFICIAL:

Name of Bidding Company	
Address	
Phone Number	
Fax Number	
License Number and Type	
Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	

(Attach a copy of your standard warranty to this Appendix Bid Form)

V. NON-COLLUSION DECLARATION:

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

_____, declares that he or she is
(Bidder's Name)

_____ of _____,
(Title) (Company's Name)

the party making the foregoing bid, that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix to the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I certify (or declare) under penalty or perjury under the laws of the State of California that the foregoing is true and correct.

Type/Print Appropriate Name, Title

Signature

Date

**APPENDIX C,
CONTRACTOR'S REFERENCE FORM**

Name of Bidding Company

Representative Name & Title

Phone Number

Please provide a minimum of five (5) separate references of roof replacement contracts that the Contractor has completed.

References must not be relatives of the contractor's representative or owners. The references given must be for clients with contracts of \$25,000 or more in the last five (5) years. Two of the references must be in office buildings of comparable size to the MetroCenter.

The following information is required for each reference given (additional sheets may be used if necessary):

1. Client's Name

Contact Person

Address

City & Zip Code

Phone Number & E-mail:

Describe Nature of Work, and
Date of Completion:

2. Client's Name

Contact Person

Address

City & Zip Code

Phone Number & E-mail:

Describe Nature of Work, and
Date of Completion:

3. Client's Name

Contact Person

Address

City & Zip Code

Phone Number & E-mail:

Describe Nature of Work, and
Date of Completion:

4. Client's Name

Contact Person

Address

City & Zip Code

Phone Number & E-Mail:

Describe Nature of Work, and
Date of Completion:

5. Client's Name:

Contact Person:

Address:

City and Zip Code:

Phone Number & E-Mail:

Describe Nature of Work, and
Date of Completion:

**APPENDIX D,
GENERAL CONDITIONS FOR RAFC PURCHASE ORDERS**

1. DEFINITIONS

- a. RAFC. Regional Administrative Facility Corporation, a California non-profit mutual benefit corporation whose members consist of the Association of Bay Area Governments (ABAG), the San Francisco Bay Area Rapid Transit District (BART), and the Metropolitan Transportation Commission (MTC).
- b. Supplier. The individual, firm, partnership, corporation or combination thereof to whom a Purchase Order is mailed or otherwise furnished by RAFC.
- c. Contract. The legal agreement between RAFC and the Supplier, which includes the terms of any written solicitation of Bids or Proposals and any deviation from the written specifications expressly accepted by RAFC; the Supplier's bid, proposal, or offer; and all terms and conditions set forth in this Purchase Order. In the event of a conflict between one or more provisions of the Contract, the more specific or stringent provision with respect to Supplier's performance of the work shall apply.

2. ACCEPTANCE OF OFFER

This purchase order constitutes RAFC's acceptance of Supplier's offer and becomes a binding contract, as defined above, when it is signed by RAFC and mailed to Supplier. No revisions to or assignments of this order shall be valid unless in writing and signed by an authorized representative of RAFC.

3. PERFORMANCE OF WORK

Supplier shall accomplish all the work and furnish all materials necessary for the completion of the work in a good, workmanlike and thorough manner and to the satisfaction of RAFC, in accordance with the Contract.

4. CONTRACT PRICE

The firm fixed price(s) set out in this purchase order include full compensation to Supplier for performing all work required by the Contract, including all applicable federal, state and local taxes.

5. VARIATION IN QUANTITY, QUALITY OR PERFORMANCE

Any variation in the quantity, quality or performance of any item or service called for by this order shall be grounds for termination by default by RAFC, as provided in 8a., unless approved by RAFC in writing.

6. PACKAGING AND CRATING

All items shall be packed by Supplier in suitable containers for protection in shipment and storage. Prices set forth in this order include all charges for Supplier's packing, crating and marking for transportation to f.o.b. point.

7. INSPECTION AND ACCEPTANCE

Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance, and after any rejections, risk of loss will be on the Supplier.

8. TERMINATION

a. If Supplier fails to comply with any of the Contract, or in the event Supplier becomes the subject of a proceeding under state or federal law for relief of creditors, or if Supplier makes an assignment for the benefit of creditors, RAFC shall have the right to hold Supplier in default and cancel this order in whole or in part. In each event, RAFC may obtain the items covered by the cancelled order from another Supplier and, if Supplier was selected as a result of a competitive procurement process, Supplier shall reimburse RAFC for the excess cost to RAFC, if any.

b. Without affecting its right to cancel this order under paragraph (a) above, RAFC may terminate this order in whole or in part prior to shipment of goods or provision of services at no cost by providing written notice to the Supplier. In such event, MTC shall reimburse Supplier for non-recoverable costs incurred to date, not to exceed the Contract Price.

9. SCHEDULE

Unless otherwise agreed, material commitments and production arrangements should not be made by Supplier in excess of the amount or in advance of the time necessary to meet the specified delivery schedule. Time is of the essence in filling this order, and it is Supplier's responsibility to comply with RAFC's delivery directions and/or schedule. Failure to deliver any item or provide any service called for by the contract within the time called for shall be grounds for termination for default as provided in 8.a.

10. INDEMNIFICATION

Supplier shall indemnify and hold harmless RAFC, MTC, BART and ABAG and their officers, agents and employees, from and against all claims, demands, suits, loss damage, injury, and liability, including any and all costs and expenses incurred in connection therewith, however caused, resulting from, arising out of, or in any way connected with Supplier's performance of this Contract, including delivery of materials or equipment to RAFC, MTC, BART and ABAG at the time and point of delivery indicated when delivery is an obligation of Supplier under the Contract.

11. INSURANCE REQUIREMENT

You agree to obtain and maintain at your own expense the following types of insurance for the duration of this agreement: (1) Worker's Compensation Insurance, as required by the law, and Employer's Liability Insurance in an amount no less than \$1,000,000; and (2) Commercial General Liability Insurance, with a combined single limit of not less than \$1,000,000 for injury to any one person, and for any one occurrence and \$2,000,000 general aggregate; and (3) Automobile Liability coverage of \$1,000,000. The commercial liability policies will contain provisions to include RAFC, MTC, BART and ABAG, their commissioners, directors, officers, representatives, agents and employees as additional insureds. Also, the commercial liability policies must specify that such insurance is primary, and no RAFC insurance will be called on to contribute to a loss.

12. INJURY PROTECTION

As part of the RAFC's Injury Prevention Program (IPP) established pursuant to California Labor Code Section 6401.7, you may be required to provide the contracting agency with a description of your IPP and, specifically, of your methods and procedures for identifying and using safe conditions and work practices at the worksite while performing specified work.

13. RESPONSIBILITY OF SUPPLIERS AND CONTRACTORS

You shall be solely responsible for any and all of the work done by your subcontractors or employees, and all orders or instruction from RAFC shall be through you to them. You shall ensure that subcontractor and employees commence their work promptly at the agreed-upon time and carry it on with due diligence; and that any and all damage caused by them is promptly repaired or corrected by them or you at not cost to RAFC. You are solely responsible for payment of subcontracts. In no event shall RAFC have any responsibility or obligation to such subcontractors.

14. PAYMENT.

You shall submit an invoice to RAFC within thirty (30) days after completion of work. RAFC will pay invoices no later than thirty (30) days after their receipt conditioned upon approval of the work done and the amount billed. All invoices shall be made in writing and delivered or mailed to RAFC as follow:

Attention: Norma White, Purchasing
Regional Administrative Facility Corporation
Joseph P. Bort MetroCenter
101 Eight Street
Oakland, CA 94607-4700

**APPENDIX E,
GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS**

GC-1 Designation of Subcontractors. The Contractor shall comply with the requirements of the Subletting and Subcontracting Fair Practices Act, State Public Contract Code Sections 4100 *et seq.*, concerning listing of Subcontractors by all persons submitting bids for public work. As used in this Article GC-1, "Subcontractors" shall include only those Subcontractors which have an employee or employees at the jobsite who fall within one or more of the classifications contained in the applicable prevailing rate of wages in the locality in which the Work is to be performed, and shall exclude the Contractor or any Subcontractor whose only employees at the jobsite are engaged solely in the delivery of materials.

GC-2 Differing Site Conditions. The Contractor shall promptly upon discovery, and before the conditions are further disturbed, notify the Project Manager or designee, in writing, of:

- (a) Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents;
- (b) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract;
- (c) Material deviations from dimensions, tolerances, conditions or locations of facilities indicated; or
- (d) Material that the Contractor believes may be hazardous waste which is not already identified as hazardous material in the Contract, as defined in Section 25117 of the State Health and Safety Code, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law.

GC-3 Prevailing Wage. Contractor and each Subcontractor shall pay to all workers employed on the Work not less than the prevailing rate of wages as determined in accordance with the State Labor Code as indicated herein.

GC-3.A State Labor Code. Contractor shall comply with State Labor Code Sections 1774 and 1775. In accordance with said Section 1775, Contractor shall forfeit as a penalty to MTC SAFE not more than \$50 for each calendar day or portion thereof for each worker paid less than the prevailing wage rates stipulated in the Invitation to Bidders for such work or craft in which such worker is employed for any Work done under the Contract by Contractor or by any Subcontractor under the Contract (in violation of the provisions of the State Labor Code and, in particular, State Labor Code Sections 1770 to 1780, inclusive). The amount of forfeiture shall be determined by the Labor Commissioner based on specified factors pursuant to said Section 1775. In addition to said penalty and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or

portion thereof for which each Worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

GC-3.B Section 1773 of the State Labor Code. Pursuant to the provisions of Section 1773 of the State Labor Code, RAFC has obtained the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided for in Section 1773.8 of said Code, apprenticeship or other training programs authorized by Section 3093 of said Code, and similar purposes) applicable to the Work to be done, for straight time, overtime, Saturday, Sunday, and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of worker concerned. Copies of the prevailing rates of wages are on file at MTC, and will be furnished by the Building Manager upon request. For crafts or classifications not shown on the prevailing wage determinations, Contractor may be required to pay the wage rate of the most closely related craft or classification shown in such determinations for Contract work.

GC-3.C Posting of Prevailing Wage Rates. A copy of the prevailing rates of wages shall be posted in a prominent place at each jobsite by the Contractor.

GC-3.D Travel and Subsistence Payments. The Contractor shall make travel and subsistence payments to each worker needed to execute the Work in accordance with the requirements in Section 1773.8 of the State Labor Code.

GC-3.E Payroll Records.

- (a) The Contractor shall comply with the provisions of State Labor Code Sections 1776 and 1812, and shall be responsible for compliance by its Subcontractors. The penalties specified in subdivision (f) of State Labor Code Section 1776 for noncompliance may be deducted from any monies due which may become due to the Contractor.
- (b) A certified copy of payroll records provided for in State Labor Code Section 1776 shall be furnished to the Project Manager or designee each week.

GC-3.F Claim for Additional Compensation. RAFC will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining its Bid, and will not under any circumstances be considered as the basis of a claim against RAFC under the Contract.

GC-4 Payment of Taxes. The Contract Prices paid for the Work shall include full compensation for all taxes which the Contractor is required to pay whether imposed by Federal, State or local government, including, without limitation, Federal excise taxes, whether or not the laws, regulations, orders and judgments respecting such taxes are changed following submission of the Contractor's bid or execution of the Contract. The Contractor shall promptly pay such taxes when and as they become due, and shall indemnify, defend and hold harmless RAFC, MTC BART, ABAG and all of their commissioners, directors, officers, agents, consultants, and

employees against any claims, losses, liabilities, penalties, interest, damages or expenses (including attorneys' fees and related costs), resulting from failure by the Contractor or its Subcontractor and vendors to pay such taxes or comply with the applicable tax laws. RAFC will not furnish any tax exemption certificate nor sign any document designed to exempt the Contractor from payment of any tax.

GC-5 Permits and Licenses. Except as may be otherwise indicated, the Contractor shall procure all necessary permits and licenses, pay all charges and fees, comply with all permit conditions and give all notices necessary and incident to the due and lawful prosecution of the Work.

GC-6 Contractor Inspection. The Contractor shall inspect all materials, supplies and equipment that are to be used, consumed or incorporated in the Work. In addition, Contractor shall conduct a continuous program satisfactory to the Project Manager or designee of construction quality control for all Work performed under this Contract. The Contractor shall have the primary responsibility for inspecting the Work and materials; the Project Manager or designee's inspection is conducted to verify that the Contractor has performed its inspections. Any observation, verification, inspection, or approval of the Work or materials by RAFC shall not relieve the Contractor of any of Contractor's obligations to fulfill the Contract as prescribed. Work and materials not meeting Contract requirements shall be made acceptable, and unsuitable work or materials may be rejected, notwithstanding that payment for such Work or materials may have been previously authorized and included in a progress payment

GC-6.A Uncovering of Work. Re-examination of questioned Work may be ordered by the Project Manager or designee at any time before Acceptance. If so ordered, the Work shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, RAFC or MTC will pay for the cost of testing and of uncovering or removing and replacing for the covering or making good of the parts removed. If such Work so exposed or examined is not in accordance with the Contract Documents, the testing and uncovering or removal, replacement, and recovering shall be at the Contractor's expense.

GC-7 Removal of Rejected and Unauthorized Work. All work which has been rejected shall be promptly remedied, or removed and replaced by Contractor in an acceptable manner and no compensation will be allowed Contractor for such removal, replacement, or remedial Work.

GC-7.A Unauthorized Work. All work done beyond the lines and grades shown on the Contract Drawings or established by the Project Manager or designee, and all extra work done without written authorization will be considered as unauthorized work. Upon order of the Project Manager or designee, unauthorized work shall be remedied, removed, or replaced at the Contractor's expense.

GC-7.B Failure to Remedy. Upon failure of the Contractor to remedy, to remove, or to replace rejected or unauthorized work, or to comply promptly with any order of the Project Manager or designee made under Paragraph GC-7, the Project Manager or designee may cause rejected or unauthorized Work to be remedied, removed, or replaced by others and deduct the costs thereof from any monies due or to become due the Contractor.

GC-8 Prompt Payment.

ARTICLE 1.7 MODIFICATIONS; PERFORMANCE; PAYMENT
[Added Stats 1992 Ch. 799 § 2 (SB 56).]

§ 20104.50. Legislative intent regarding prompt payment; Interest on late payment; Procedure; Definitions (a) (1) It is the intent of the Legislature in enacting this section to require all local governments to pay their contractors on time so that these contractors can meet their own obligations. In requiring prompt payment by all local governments, the Legislature hereby finds and declares that the prompt payment of outstanding receipts is not merely a municipal affair, but is, instead, a matter of statewide concern.

(2) It is the intent of the Legislature in enacting this article to fully occupy the field of public policy relating to the prompt payment of local governments' outstanding receipts. The Legislature finds and declares that all government officials, including those in local government, must set a standard of prompt payment that any business in the private sector which may contract for services should look towards for guidance.

(b) Any local agency which fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.

(c) Upon receipt of a payment request, each local agency shall act in accordance with both of the following: (1) Each payment request shall be reviewed by the local agency as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.

(2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

(d) The number of days available to a local agency to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which a local agency exceeds the seven-day return requirement set forth in paragraph (2) of subdivision (c).

(e) For purposes of this article:

(1) A "local agency" includes, but is not limited to, a city, including a charter city, a county, and a city and county, and is any public entity subject to this part.

(2) A "progress payment" includes all payments due contractors, except that portion of the final payment designated by the contract as retention earnings.

(23) A payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the financial officer of the local agency.

(f) Each local agency shall require that this article, or a summary thereof, be set-forth in the terms of any contract subject to this article.

GC-9 Resolution of Construction Claims

ARTICLE 1.5 RESOLUTION OF CONSTRUCTION CLAIMS

[Added Stats 1994 Ch. 726 § 22 (AB 3069), effective September 21, 1994. Former Article 1.5, a/so entitled "Resolution of Construction Claims" consisting of §§ 20104-20104.6, was added Stats 1990 Ch. 1414 § 2 and repealed, operative January 1, 1994, by the terms of § 20104.8.]

§ 20104. Application of article; "Public work"; "Claim"

(a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter I of Part 2.

(b) (1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state of the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991. (Added Stats 1994 Ch. 726 § 22 (AB 3069), effective September 21, 1994)

§ 20104.2 Requirements to submit claim; Agency's response; Dispute by claimant over response; Failure of agency to respond; Inapplicability of article to tort claims

For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time the claim is denied as a result of the

meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

(Added Stats 1994 Ch. 726 § 22 (AB 3069), effective September 21, 1994)

§ 20104.4 Procedures to resolve claims

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3(commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation of arbitration process.

(Added Stats 1994, Ch. 726 § 22 (AB 3069), effective September 21, 1994)

§ 20104.6 Payment of portion of claim which is undisputed; Payment of interest on arbitration award or judgment.

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award of judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

(Added Stats 1994, Ch. 726 § 22 (AB 3069), effective September 21, 1994)

§ 20104.8 [Section repealed 1993.]

(Added Stats 1990 Ch. 1414 § 2 (AB 4165). Repealed, operative January 1, 1994, by its own terms.

**APPENDIX F,
PAYMENT BOND TO ACCOMPANY CONTRACT**

KNOW ALL MEN BY THESE PRESENTS

THAT WHEREAS, the Regional Administrative Facility Corporation has awarded to

as Principal, hereinafter designated as the "Contractor," a contract for the work described as follows:

AND WHEREAS, Contractor is required to furnish a bond in connection with said contract, to secure the payment of claims of laborers, mechanics or material suppliers employed on work under said contract as provided by law;

NOW, THEREFORE, We the undersigned Contractor and Surety are held and firmly bound unto the Regional Administrative Facility Corporation in the sum of dollars _____ (\$ _____), said sum being 100% of the estimated amount payable by the said the Regional Administrative Facility Corporation under the terms of the contract, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly and by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if Contractor, his or its heirs, executors, administrators, successors, assigns or subcontractors shall fail to pay any of the persons named in Section 3181 of the Civil Code, amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor pursuant to Section 13020 of the Unemployment Insurance Code with respect to the work and labor, that the surety hereon will pay for the same, in an amount not exceeding the sum specified in this bond; otherwise, the above obligation shall be void. In case suit is brought upon this bond, the said surety will pay a reasonable attorney's fee to be fixed by the court.

This bond shall inure to the benefit of any of the persons named in Section 3181 of the Civil Code, so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____ day of _____ A.D., 2006.

Contractor

Surety

Attorney in Fact

[SEAL]